

(2008) 06 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 3070 of 2007

Muslim Uddin Mazumdar and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Assam Aided Higher Secondary, High and Middle Schools Management Rules, 1976 — Rule 6

Citation : (2009) 4 GLT 106

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : H.R.A. Choudhury, R. Choudhury, F.U. Borbhuyan and S.K. Nargis, for the Appellant; M. Gogoi Medhi, K.K. Mahanta and K. Konwar, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The order dated 5.6.2007 of the Incharge Inspector of Schools, Nagaon District Circle, Nagaon reconstituting the Managing Committee of Ambari High School; Nagaon (hereinafter referred to as the "School") is under challenge in the instant proceeding.

2. I have heard Mr. H.R.A. Choudhury, learned Senior counsel for the Petitioners, Ms. M. Gogoi Medhi, learned Standing Counsel, Education Department for the official Respondents and Mr. K. Konwar, learned Counsel for the Respondent No. 4.

3. The Petitioners' pleaded case is that, the school is a government aided institution governed by the Assam Aided Higher Secondary, High and Middle Schools Management Rules, 1976 (hereinafter referred to as the "Rules"). In terms of the guidelines formulated by the government, the Managing Committee of the School was constituted on 1.2.2006 with the Petitioner No. 1 as the President and the Petitioner No. 8, the donor member thereof respectively. While the said body was in office, on the basis of some frivolous allegations against it, the Inspector of Schools, Nagaon District Circle (for short also referred to

Respondent No. 3) vide order dated 13.6.2006 (sic.) kept the order dated 1.2.2006 constituting the said Managing Committee in abeyance. Thereafter, by his order dated 15.6.2007 (sic.) the Managing Committee was resurrected as the allegations made against it were found to be baseless. However, by the impugned order, the Managing Committee of the School has been reconstituted ousting the Petitioners and others. This, the Petitioners have pleaded is in violation of the principles of natural justice as well as in contravention of Rule 6 of the Rules.

4. The Director of Secondary Education, Assam in his affidavit has justified the impugned decision while contending that the Petitioner No. 1 and the Petitioner No. 8 have since been convicted in a criminal offence in Sessions Case No. 29/1996 and had been consequently arrested and detained in jail. Moreover, a number of complaints were received against the members of the Managing Committee by the Respondent No. 3 and on enquiry, the said authority (Respondent No. 3) being satisfied that the Managing Committee deserves to be dissolved, the impugned decision was taken. The answering Respondent affirmed the power of the Respondent No. 3 to dissolve the Managing Committee of the School under Rule 6 of the Rules. Noticeably, however, it was not indicated as to whether, approval of the decision taken by the Respondent No. 3 had been accorded by the deponent i.e. Director of Secondary Education, Assam.

5. The Respondent No. 4 in his affidavit has substantially endorsed the stand taken by the State Respondents.

6. Mr. Choudhury has urged that not only the allegation made against the earlier Managing Committee has been asserted to be baseless, the composition thereof was approved with the full knowledge that the Petitioners were accused in a criminal case. According to the learned Senior Counsel, in the above factual premise, the impugned order without affording prior opportunity of hearing to the said Managing Committee is non est in law. Moreover, as the approval of the Director of Secondary Education, Assam had not been accorded to the dissolution of the Managing Committee, the reconstitution in terms of the order dated 5.6.2007 is per se invalid.

7. Ms. Gogoi Medhi with reference to the official records has submitted that not only the subsisting facts and circumstances justify the dissolution of the Managing Committee, the affidavit filed by the Director of Secondary Education, Assam implicitly demonstrates his approval to the action taken by the Respondent No. 3.

8. Mr. Konwar has urged that in the facts and circumstances of the case, the approval of the Director of Secondary Education, Assam is apparent and there being sufficient materials on record to sustain the impugned decision, no interference of this Court is warranted.

9. The pleadings of the parties and the rival submissions have received the due consideration of this Court. A perusal of the official records produced by the

learned Standing Counsel, however, do not disclose any clear and categorical finding of the departmental authorities against the malfunctioning of the Managing Committee of which the Petitioner No. 1 had been the President. Instead, the note dated 13.7.2006 evidences that the allegations levelled against the said Managing Committee were not genuine. It was resultantly, that the order dated 13.6.2006 (sic.) was withdrawn.

10. Assuming that the conviction of the Petitioners in a Sessions case and the confirmation thereof by this Court in appeal, is considered to be a disqualification to continue as a member of the Managing Committee of an academic institution, a plain reading of Rule 6 of the Rules, though may justify the intervention of the Inspector of Schools as contemplated therein, the dissolution of the Managing Committee to be effective in law has to be approved by the Director of Secondary Education, Assam save in cases where such approval is inferable under his general and special orders. Neither the Inspector of Schools, NDC, Nagaon present in Court nor the learned Standing Counsel, Education Department could refer to any such order of the Director of Secondary School, Assam any order general or special. Having regard to the unequivocal mandate of the above provision of the Rules, it is difficult to assume such a approval from the affidavit filed in the instant proceeding. Conspicuously, the Director of Secondary Education, Assam abstained from making any mention about his approval to the decision of the Inspector of Schools, Nagaon District Circle, Nagaon, Respondent No. 3. It would, therefore, be reasonable to conclude that the dissolution of the Petitioner's Managing Committee was wanting in approval of the Director of Secondary Education, Assam as prescribed by Rule 6. Incidentally, no order for dissolution of the Petitioners' Managing Committee is available in the official records. Further, the impugned order though seeks to modify some earlier order omits to mention the particulars thereof. In the opinion of this Court, a bare perusal thereof displays a mechanical exercise of executive power.

11. On the above considerations, this Court is constrained to interfere with the impugned order of reconstitution of the Managing Committee of the School. The order dated 5.6.2007 (Annexure-4) passed by the Inspector of Schools, Nagaon District Circle, Nagaon is therefore set aside. The petition is allowed, Mr. Anisur Rahman Choudhury, Inspector of Schools, Nagaon District Circle, Nagaon is personally present in Court in terms of the order of this Court dated 3.6.2008. His personal appearance is dispensed with. No costs.